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Attorney for Plaintiff,
Readify Pty Ltd.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

READIFY, Pty Ltd., an Australian
Corporation,

Plaintiff,

v.

READIFYBLOG, an individual;

Defendant.

Case No.: 4:12cv05357 KAW

PLAINTIFF'S *EX PARTE*
APPLICATION FOR LEAVE TO
ENGAGE IN *EX PARTE* LIMITED
DISCOVERY

Date: December 24, 2012

Time: 11:00 a.m.

Dept: 4

Judge: Hon. Kandis A. Westmore

Plaintiff, Readify, Pty Ltd., by and through his undersigned counsel, and pursuant to Federal Rules of Civil Procedure, Rule 26(d)(1), seeks leave of Court to engage in *ex parte* limited discovery to establish the true identity of the Defendant, and for grounds in support thereof states:

1. Federal Rules of Civil Procedure, Rule 26(d)(1) states: "A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order." The Defendant in this action is presently known only by his or her internet *nom de plume* and hence Plaintiff can not (i) serve and thereby subsequently (ii) confer as required by Rule 26.

1 2. Plaintiff has taken all possible steps to locate and identify Defendant
2 to no avail, including:

- 3 a. Searching the Defendant's Internet blog for information that may
4 identify or help identify Defendant;
- 5 b. Searching other Internet blogs and websites to which Defendant's
6 Internet blog provides hyperlinks, for information that may identify
7 Defendant or provide contact information;
- 8 c. Searching social media websites referred to in Defendant's Internet
9 blog and other online search engines for the pseudonym used in the
10 blog;
- 11 d. Searching Plaintiff's own records for current, prior, or prospective
12 employees or customers with names that may related to
13 Defendant's pseudonym.

14 3. Defendant Readifyblog's personal information is known by the
15 Internet site that registered the Defendant to permit him or her to post comments on
16 that site. In particular, Defendant Readifyblog maintained an Internet blogging
17 account with Automattic, Inc. (doing business as "WordPress.com"), which
18 contains the Defendant's personal information.

19 4. Plaintiff seeks to obtain Defendant Readifyblog's account information
20 maintained by Automattic, Inc. to establish the true and real identity of the
21 Defendant. Specifically, the account information that Plaintiff seeks includes the e-
22 mail address and Internet Protocol ("IP") address that Defendant used to create an
23 account with Automattic, Inc. Plaintiff also seeks any optional account information
24 that Defendant may have provided to Automattic, Inc., limited to his or her real
25 name, telephone number, physical address, and/or general location.

26 5. Even if Defendant did not provide his or her real name, physical
27 address, or general location to Automattic, Inc., Plaintiff would be able to ascertain
28 the Defendant's true/real identity and physical location from Defendant's email

1 service provider or Internet service provider – merely by obtaining the Defendant’s
2 email and IP addresses from Automattic, Inc.

3 6. Given the constraints imposed upon Automattic, Inc. by the *Electronic*
4 *Communications Privacy Act of 1986*, 18 U.S.C. §2701 *et seq.*, however, those
5 entities may not release the above-mentioned account information of the Defendant
6 to Plaintiff absent a judicial subpoena.

7 7. Accordingly, for the sole purpose of ultimately establishing the
8 identity of the Defendant so that Plaintiff may (i) amend the complaint to add the
9 Defendant’s real name and address and (ii) thereafter be able to affect service,
10 Plaintiff seeks leave to serve Subpoenas *Duces Tecum* Without Deposition on
11 Automattic, Inc., solely for the account information of the Defendant maintained by
12 that entity. Plaintiff provides, as Exhibit 1 to this Ex Parte Application, a copy of
13 the subpoena intended to be served upon Automattic, Inc. for the purpose of
14 discovering Defendant’s identity or contact information.

15 8. Absent leave to do so, Plaintiff will not be able to identify this
16 Defendant and pursue its claims for defamation and interference with prospective
17 economic advantage for its lack of ability to identify and serve the Defendant.

18 9. Plaintiff will provide copies of all information received pursuant to
19 such subpoenas on Defendants when they make an appearance in this matter.

20 WHEREFORE, Plaintiff requests leave to issue Subpoena *Duces Tecum*
21 Without Deposition on Automattic, Inc. for the account information of the
22 Defendant.

23 DATED: December 24, 2012

24 PROCOPIO, CORY, HARGREAVES &
25 SAVITCH LLP

26 By: /s/ Frederick K. Taylor

27 Frederick K. Taylor
28 Attorneys for Plaintiff,
Readify, Pty Ltd., an Australian
Corporation